

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Performance Measurements and |) | CC Docket No. 98-56 |
| Reporting Requirements |) | RM-9101 |
| for Operations Support Systems, |) | |
| Interconnection, and Operator Services |) | |
| and Directory Assistance |) | |

BELLSOUTH COMMENTS

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SUMMARY

This Commission proposal to micromanage local market performance measurement should be terminated. The local market issues it seeks to regulate are beyond the Commission's jurisdiction, regardless of whether it attempts to present its rules as "model" ones. Not only is the Commission's proposed course beyond its jurisdiction, it conflicts with Congress's goal of deregulating local markets and its decision to rely on private negotiations under state review, where necessary, to accomplish its goal. The Commission's proposal to force federal micromanagement of the measurement process will impose substantial costs on the market. Yet, the Commission points to no evidence showing that any of its proposed measures are justified by any actual occurrence of marketplace-affecting discrimination. Thus, the Commission suggests no benefit from its proposals that will even begin to counterbalance the concrete costs it would force on the market. The Commission's proposed approach will also handicap the ability of ILECs, CLECs and state commissions to work out flexible market-based solutions that will provide for developing efficient and effective measures to meet the needs of varying local markets across the nation.

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BELLSOUTH COMMENTS

INTRODUCTION

BellSouth files these Comments in response to the Commission's Notice of Proposed Rulemaking ("*Notice*") issued in this proceeding. This Commission rule-making proceeding to set performance measures and detailed reporting requirements is beyond the bounds of the Commission's authority over the delivery of local services and should be terminated in favor of some other appropriate procedural vehicle. The Commission's approach of attempting to micro-manage performance measurement and reporting through the creation of thirty broad categories of measures (and many more sub-categories) is also ill-advised. The Commission needs to fundamentally rethink its approach. If the Commission feels compelled to proceed, it must maximize the flexibility of ILECs to measure performance. That approach would allow market participants (under the supervision of state commissions where necessary) to develop efficient and effective market-based solutions to measuring and reporting on performance in the local market. BellSouth sets out its reasoning below. In order to further highlight the deficiencies of the Commission's current approach, BellSouth also sets out below detailed criticisms of particular proposed measures and reporting categories.

I. THIS PROCEEDING IS NOT AN APPROPRIATE VEHICLE FOR THE COMMISSION TO APPROACH PERFORMANCE MEASURES FOR LOCAL SERVICES

The Commission has instituted this formal rulemaking proceeding ostensibly to set non-binding “model” rules. The Commission’s choice of procedure is at odds with its stated goal of prescribing non-binding rules. As set out below, the *Notice* makes it clear that the Commission’s real intent is to nationalize the establishment of performance measures for local telecommunications services.

However, the Commission has no authority to set national performance standards for the delivery of local telecommunications services. *Iowa Utilities Board v. FCC*, 120 F.3d 753, *cert. Granted sub. Nom. AT&T Corp. v. Iowa Util. Bd.*, 118 S. Ct. 879 (1998). Thus, its pursuit of performance measurements through a formal rulemaking is inherently at odds with its jurisdiction, as two Commissioners have pointed out.¹ The Commission should end this proceeding and begin anew, through a Notice of Inquiry or other informal process. Informal processes are legally required here. They are also better suited to developing solutions to the complex problems involved in measuring and reporting on local service performance.

A. The Commission Has No Authority To Set Performance Measurements For the Delivery of Local Services to CLECs

As BellSouth explained in its *Comments* and *Reply Comments* on LCI’s Petition for Technical Standards,² the Commission has no statutory authority to set performance measures for local services. Regulation of local services has traditionally been reserved to the states.

¹ *Dissenting Statement* of Commissioner Furchtgott-Roth at 6; *Dissenting Statement* of Commissioner Powell at 1.

² *Comments and Reply Comments* of BellSouth Corp., *In The Matter of Petition for Expedited Rulemaking of LCI International Telecom Corp. and Competitive Telecommunications*

Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986). The Telecommunications Act of 1996 (“the 1996 Act”) continues and reinforces the jurisdictional role of the states over local services. Although the Commission cites section 251’s nondiscrimination requirement as a source of authority to create performance measures, the Eighth Circuit has held that section 251 provides the Commission no authority to regulate local service except in six specific areas, none of which are applicable here. *Iowa Utilities Board v. FCC*, 120 F.3d at 794 and n. 10.

That the Commission’s proposed measures aim at regulating the local market is clear. The measures it proposes target Operations Support Systems (“OSS”) used to provide competing local carriers access to local services, access to piece parts of ILEC local networks for use in delivering local service, and access to Operator Services and Directory Assistance functions for use in providing local service.

The Commission’s action here threatens to overturn Congress’s basic deregulatory goals for the 1996 Act as well as its approach to achieving those goals. First, the Commission’s attempt to impose a new federal obligation on ILECs to measure and create performance reports for hundreds of CLECs across dozens of variables is hardly deregulatory. Second, the Commission’s approach conflicts with Congress’s statutory scheme for oversight of the local market. Congress chose to rely on market participants to negotiate (or arbitrate where necessary) access to ILEC networks and services, including performance measures and standards that fit the systems of the particular local carriers involved. State commissions, not the FCC, were to backstop the process. Congress fully intended that market participants develop private solutions to issues such as how to measure performance. CLECs in BellSouth’s region have done just that, and have negotiated performance measures with BellSouth. Where regulatory oversight is

Association to Establish Technical Standards for Operations Support Systems, RM-9101, dated July 10, 1997 and July 30, 1997.

required, state public service commissions, not the FCC, are providing it in BellSouth's region, as Congress intended.³ The FCC's proposed foray into creating local service measures threatens to upset Congress's apple cart and override the authority of the states.

B. The Eighth Circuit Has Warned The Commission To Cease Attempting To Regulate Local Matters Through Non-Binding Opinions Intended To Intimidate States and Local Carriers

The *Notice* claims that its primary goal is creating a set of model local market performance measures in response to what soon will be a year old request from NARUC.⁴ However, as Commissioners Powell and Furchtgott-Roth have pointed out, the Commission's decision to initiate a formal rule-making proceeding contradicts any claim of genuine interest in model rules.⁵ And, the *Notice* makes it clear that the "model" rules will remain "model" only if Congress's intended local regulators, state commissions, ILECs and CLECs adopt them.

The adoption of national, legally binding rules may prove unnecessary, however, in light of the states' and carriers' application of the model performance measurements and reporting requirements we proposed to adopt in the instance. *Notice*, at ¶ 24; *see also* ¶ 4.

Particularly disturbing is the fact that the Commission's previous pursuit of this "model" path to imposing its views on state regulators and local markets resulted in a writ of mandamus from the Eighth Circuit. After the Eighth Circuit held that the 1996 Act left local

³ See, e.g., Order of the Georgia Public Service Commission, *In Re: Performance Measurements for Telecommunications Interconnection, Unbundling and Resale*, Dkt. No. 7892-U, decided Dec. 30, 1997 ("Georgia Performance Measures Order").

⁴ In November, of last year NARUC urged the Commission "to move promptly to advance the establishment of performance guidelines" for OSS functions." NARUC Convention Floor Resolution No.5, "Operating Support Systems Performance Standards" (adopted by the Exec. Comm. on Nov. 11, 1997. The Commission's proposal goes far beyond NARUC's request to "advance" the ball.

⁵ *Dissenting Statement of Commissioner Furchtgott-Roth* at 6-7. *Dissenting Statement of Commissioner Powell* at 1. Whether the Commission chooses to call its rules "model" has no bearing on their legal classification. *Western Coal Traffic League v. U.S.*, 694 F.2d 378 (5th Cir. 1982), *rehearing*, 719 F.2d 772, *cert. denied*, 466 U.S. 953 (1983).

pricing matters to the states, the Commission included advisory “model” pricing rules in its *Ameritech Michigan Order*.⁶ Those rules would have required Bell companies seeking section 271 relief to set local network element prices according to Commission rules rather than at the state commission-set rates that Congress intended. The Eighth Circuit was forced to issue a mandamus order to set matters right. The court held that the “FCC was simply using the advisory portion of its [*Ameritech Michigan Order*] order as a vehicle by which it could intimidate state commissions into complying with the substance of the rules we vacated in our July 18 decision.” *Iowa Utilities Board v. FCC*, 135 F.3d 535, 542 (8th Cir. 1998). The Eighth Circuit’s writ of mandamus should also have made it crystal clear to the Commission that it cannot impose through section 271 what it has no authority to impose under sections 251 and 252.

The threatening language quoted from the *Notice* above and the Commission’s pursuit of a formal rule-making process here mean that it would be engaged in the same “type of ‘evasion’ that necessitate[d] mandamus relief” from the Eighth Circuit should it continue on its present course. *Iowa Utilities Board v. FCC*, 135 F.3d at 542.

C. This Proceeding Should Be Ended In Favor Of A New Vehicle For Defining Performance Measures and Reporting Obligations

To proceed in good faith and avoid the possibility of the “further protracted legal challenges” noted by Commissioner Furchtgott-Roth, the Commission should abandon this proceeding. A notice of inquiry or some other genuinely informal proceeding, as suggested by Commissioners Powell and Furchtgott-Roth should be substituted. An

⁶ Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, CC Dkt. No. 97-137 (rel. Aug. 19, 1997) (“*Ameritech Michigan Order*”).

informal proceeding would lend itself better to the task of marrying the views of the wide array of local carriers into a set of efficient and effective local performance measures. To be useful, any such measures must be made explicitly flexible to accommodate different markets, different local carriers and different state commissions.

The goal of such an informal proceeding would be to develop broad, flexible parameters for optional performance measures. Local carriers, with state input where necessary, could then select and adapt measures to meet their needs. This approach would allow markets to develop more efficient and effective ways to implement measures compared to an inflexible national mandate that will fit few, if any, actual markets.

II. THE *NOTICE* SUGGESTS NO BASIS FOR CONCLUDING THAT THE BENEFITS OF THESE MEASURES WILL OUTWEIGH THEIR COSTS

The *Notice* is uninformed by the surgeon's credo of "do no harm." That this credo must be a touchstone for regulators of economic market activities is uncontroverted by recent economic history. The *Notice*'s misguided quest "to detect possible discrimination" regardless of whether the discrimination is likely to have any market effect makes little sense. The sole real world basis cited for this proceeding is "anecdotal evidence suggesting that incumbent LECs may not be providing nondiscriminatory access to OSS functions and interconnection." *Notice* at ¶ 13 (emphasis added). Without evidence supporting the need for any particular measure, the benefits from this proceeding remain purely hypothetical. A carrier engaging in illegal discriminatory conduct would be in violation of the Act regardless of these proposed measures. However, the costs of measuring and reporting are real.

A. The Notice Must Be Refocused If Commission-Developed Measures Are To Promise Any Net Benefit To The Marketplace

Both the Commission's goal for this proceeding and the fact that it is moving without real evidence of need promise substantial marketplace harm rather than benefits. First, in developing its laundry list of thirty performance measures (with many sub-categories), the *Notice* states that "our goal [is] detecting possible instances of discrimination," *Notice* at ¶ 36, rather than discrimination that is likely to make a real marketplace difference.⁷ Looking hard enough for discrimination in areas as complex as telecommunications OSS and network element provisioning is all but certain eventually to yield indications of mathematical differences, if only because outcomes reflect the fact that CLECs are pursuing different business plans.

But aiming to detect "possible instances of discrimination" will yield only the "large, bad and unintended" consequences cited by Commissioner Furchtgott-Roth.⁸ Some CLECs will use instances of this sort of "discrimination," however meaningless to their ability to compete, for continued regulatory posturing and litigation rather than as aids to enter and compete in the local market. At least some CLECs will focus on gaming otherwise meaningless measurements, rather than competing, creating additional instances of perceived discrimination that will engender more litigation and wasted regulatory resources, and more distractions from the business of competing in local markets.⁹

⁷ The Commission also explained that its goal "is to isolate the activities in which an incumbent could discriminate," rather than focusing on areas where discrimination has or is likely to occur. *Notice* at ¶ 36 (emphasis added).

⁸ *Dissenting Statement* of Commissioner Furchtgott-Roth at 1.

⁹ The scope and detail of the measures also threaten to straight-jacket ILEC efforts to improve systems. Implementing systems upgrades will threaten performance on the performance

The Commission must reassess the focus of this proceeding on detecting any possible discrimination. In fact, the Commission could perform a major service that will re-focus a number of CLECs on the market rather than regulatory posturing by clarifying what it means by nondiscrimination. Although the *Notice* generally focuses on detecting “possible discrimination,” the Commission at times presents a more sensible approach. Thus, “nondiscriminatory access to the OSS functions, however, rests on a fairly straightforward concept: efficient and effective communications between” the local carriers involved. *Notice* at ¶ 9-10 (emphasis added). Substituting this powerful notion of “efficient and effective communications” for parity on each aspect of 30 categories (and many more sub-categories) of performance measures would bring rationality to the field and encourage focus on the market rather than on creating or avoiding meaningless “discrimination” out of constant concern over legal and regulatory action. This approach would put the Commission’s efforts here in synch with its previous approach to nondiscrimination in these areas. Under that approach, nondiscrimination requires ILECs to provide CLECs with access to ILEC functions with retail analogues in “substantially the same time and manner” as the ILEC.¹⁰ Where UNEs or other functions without retail analogues are involved, the ILEC must provide access in a manner that allows an equally efficient competitor a “meaningful opportunity to compete.”¹¹ Interconnection is to be at least equal in quality to that which the ILEC provides itself.

measure scorecard. Innovative ILEC solutions to complex problems may be rejected because they may threaten to create “discrimination” where a particular ILEC is near the border. One of the “large, bad and unintended” effects of this *Notice* is that it will force ILECs to design to performance measure read-outs rather than market demand.

¹⁰ *Ameritech Michigan Order* at ¶ 135.

¹¹ *Ameritech Michigan Order* at ¶ 130.

This proceeding has also gone astray in that it is based solely on admittedly “anecdotal evidence” that discrimination may have occurred. Cites to one-sided recitations of “anecdotal evidence” is no basis for a proposal to impose the costs of creating, measuring and reporting on 30 broad categories of performance measures, each broken down into many sub-parts. *Notice* at ¶ 13. Not a single measure is traced to any serious, unrefuted allegation of broad discriminatory conduct. Thus, there is no concrete reason to think that any particular measure will serve a useful purpose. In addition, without evidence of concrete failures of the states and private negotiations to create solutions to meaningful real-world discrimination, there is no need or statutory basis for Commission intervention.¹² *See Dissenting Statement of Commissioner Furchtgott-Roth* at 2.

In comparison to the “anecdotal evidence” of possible discrimination that the Commission chooses to rely on, there is real evidence that, at least, BellSouth is providing services and network elements to CLECs in strict accordance with the 1996 Act. BellSouth’s performance reports filed with the Georgia PSC show that CLECs are receiving nondiscriminatory access to BellSouth OSS, retail services and network elements.

¹² Much has happened since NARUC’s resolution seeking prompt FCC movement to advance the establishment of performance guidelines. For example, the Georgia PSC has ordered a comprehensive set of performance measures. *Georgia Performance Measures Order*.

B. The Laundry List Of Proposed Measures Will Not Spur Local Competition

The Commission suggests that “prompt implementation” of its proposed laundry list of performance measures will “help spur the development of local competition.”

Notice at 23.

However, local competition is present and growing in BellSouth’s region without benefit of the Commission’s laundry list. CLECs in BellSouth’s region are relying on negotiated and state-ordered performance measures, or simply competing successfully without special measures. The Commission offers no studied explanation of how and why its measures would create any additional benefit.

In addition, the Commission offers no evidence or even thoughtful conjecture that suggests local competition is handicapped without its performance measures. As set out above, evidence to that effect is absent from this proceeding. Although AT&T and MCI may argue that these measures are necessary to enter and compete in local markets, numerous other CLECs are actually entering and competing in their absence. BellSouth submits that the barriers to local competition are properly to be addressed by the local carriers and the states, and that both groups are getting the job done. BellSouth has hundreds of agreements with CLECs in its region. Over seventy CLECs are using BellSouth’s electronic interfaces to obtain access to BellSouth’s network through resale, unbundled network elements and interconnection. The numbers of CLECs doing business with BellSouth and the services and elements they are ordering continue to grow. There is general agreement that competition for lucrative business customers is here today, even without the Commission’s proposed performance measures.

The remaining major obstacles to local competition are regulatory ones. The implementation of an appropriate universal service fund would be a substantial benefit to broad local competition. Eliminating the posturing of the major IXC's who refuse to enter the local market broadly by allowing BOCs to enter the long distance market would be a catalyst for broad local competition. Performance measures are not a major issue affecting the development of local competition.

III. CERTAIN PROPOSED MEASURES ARE REPETITIVE AND SHOULD BE DELETED

In this and following sections, BellSouth critiques particular Commission-proposed measures and reporting requirements. This critique is designed to highlight the overall problems caused by Commission attempts to set national standards at a micro level of detail in an extremely complex and varied area of market activity. It does not imply any endorsement of this Commission attempting to impose performance measurements on local markets across the country.

The Commission should avoid imposing particularly costly measurement and reporting obligations where other measures capture similar information.

A. The Commission's Proposed "Percentage of Troubles In 30 Days" Is An Appropriate Substitute For "Service Order Accuracy"

The Commission tentatively concludes that a measure of "Percentage of Troubles in Thirty Days for New Orders" would provide the information sought by LCUG's proposal to measure service order accuracy. *Notice* at ¶ 68. (This measure should properly be titled "Percentage of Troubles Within 30 Days Of Installation." Troubles are properly measured from the date of installation, not the order date. BellSouth measures

from the date of installation.) BellSouth concurs that troubles reported provides a satisfactory measure of the accuracy of BellSouth's completion of CLEC service orders. In addition, measuring service order accuracy requires a very labor intensive process of manually reviewing both mechanized and non-mechanized orders to compare what was ordered with what was installed. This manual process would be extraordinarily expensive compared to the mechanized process for trouble reports. Therefore, the Commission should not impose this measure.

B. "Average Jeopardy Notice Interval" and "Percent Orders Given Jeopardy" Measures Should Be Dropped In Favor Of The "Percent Due Dates Missed" and "Average Completion Interval" Measures

The Commission proposes to require ILECs to measure the time and frequency with which they provide jeopardy notices to themselves and to CLECs. *Notice* at ¶¶ 59, 62-62. Due to the nature of jeopardy notices, and the fact that they lack a retail analogue, BellSouth suggests that these proposed measures be dropped in favor of the "Percent Due Dates Missed" and "Average Completion Interval" measures. These measures reveal whether due dates are missed more frequently for CLECs than ILECs, and provide the information necessary to detect whether a substantive problem of disparate treatment exists.

Jeopardy notices are issued when potential order fulfillment problems arise. They are issued on an ad hoc basis to signal a need to focus on the order. Issuance of an order jeopardy is not synonymous with a likelihood that the order will not be filled on time. Standard definitions of whether and when to issue jeopardies do not exist. They are issued as individual circumstances warrant. Adopting these proposed measures may

discourage ILECs from issuing jeopardies on CLEC orders as precautionary means to insure that CLEC orders are completed on time.

There is also no retail analogue for issuance of jeopardy notices. Implementing these proposed measures would be doubly expensive because the Commission seems to propose that it would require BellSouth to begin measuring for itself as well as CLECs. Any jeopardy notice measurement process would also be labor intensive, requiring manual review of order flows to determine whether and when a jeopardy was issued. “Percentage of Due Dates Missed” and “Average Completion Interval” will supply the necessary substantive information at a much reduced cost.

C. The “Average Submissions Per Order” Measure Should Be Dropped

The Commission proposes to measure the average number of times an order must be submitted before it is valid in addition to the “Percentage of Rejected Orders.” Adding the Average Submissions measure adds to ILEC costs but will not provide useful additional information on ILEC provided access to its systems. The Commission suggests that this measure may reflect problems with ILEC gateways or that CLECs do not have an adequate understanding of the rules for submitting valid orders. *Notice* at ¶ 76. However, any such problems with gateways or ILEC rules will be revealed by the “Percentage of Rejected Orders” measure.

Although BellSouth can perform this measure for CLECs, Commission action to impose such a measure is wasteful because BellSouth’s interest is already in minimizing the continued submission and re-submission of invalid service requests.¹³ Rejecting

¹³ BellSouth does not perform this measure for itself. The imposition of a requirement that ILECs undertake this measure for themselves would be a pure waste of resources.

service requests costs BellSouth substantial time and expense to evaluate and return the request. Problems in this area are more likely to result from CLEC failure to properly assess and input the needs of their customers than from discrimination on BellSouth's part.

IV. THERE IS NO NEED FOR OTHER MEASURES WHERE ILEC SYSTEMS DO NOT DISTINGUISH BETWEEN ILEC AND CLEC ORDERS

Where CLEC orders take their place in the order queue with ILEC orders, and systems do not distinguish between the two, there can be little benefit from imposing measurement costs to determine that nondiscrimination is the norm. The following measures should therefore be dropped

A. "Average Time to Answer Operator Services" and "Average Time to Answer Directory Services" Measures Should Be Dropped

The costs of establishing these measures far outweigh any possible benefits. The costs to measure would be substantial, requiring BellSouth to purchase and install special software. The current benefits would be non-existent. Because no CLEC in BellSouth's region has even requested dedicated OS or DA trunk groups, CLEC end user OS and DA calls sent to BellSouth are placed in a queue with BellSouth end user calls based strictly on time of arrival.¹⁴ BellSouth switches cannot distinguish between whether the call is from a CLEC or BellSouth end user, thus discrimination is not possible. Even the one-sided "anecdotal evidence" relied on by the Commission does not suggest that OS/DA discrimination of the kind the Commission seeks to measure is an issue.

¹⁴ Should CLECs in BellSouth's region place dedicated OS or DA trunks in service, BellSouth could measure performance on those trunks.

B. The Commission's Proposed Approach To Billing Measurements Is Unrealistic And Will Impose Excessive Costs On The Market

The Commission's billing proposals intrude in a particularly complex area. Micromanagement from Washington, D.C. of the process for billing local services will not benefit CLECs, ILECs or consumers. As described in more detail below, the Commission could best serve all parties and consumers by allowing negotiations and standard-setting activities to continue towards developing market-based billing solutions without regulatory obstacles

V. DISAGGREGATION OF MEASURES

The Commission seeks comment on the appropriate level of disaggregation for performance measure reporting. The Commission currently proposes a laundry list of thirty measurement categories, broken down into numerous proposed sub-categories. Reporting is to be further broken down by individual CLEC. The Commission is further considering the level of geographic disaggregation, including the possibility of disaggregating to LATA or MSA levels. Proposals to break down most categories raises complexity and expense without necessarily providing meaningful information. Requiring ILECs to disaggregate data beyond a state or regional level raises complexity and costs exponentially.

A. Geographic Level Disaggregation and Reporting

Attachment 1 illustrates the number of data elements necessary for BellSouth to produce the measurements currently proposed by the FCC disaggregated beyond a state level. As can be readily seen, levels of disaggregation beyond region and state become totally unmanageable and would be extremely costly to all ILECS.

BellSouth does not disaggregate data beyond the state level for its own retail operations. To force such disaggregation now would require extensive modifications to systems and processes. These modifications would be of little practical benefit to CLECs because they will have access to data in BellSouth's data warehouse. That warehouse stores raw data underlying the performance reports that BellSouth creates. Performance reports, and underlying data where appropriate, is posted on BellSouth's interconnection web site each month.¹⁵ CLECs that are interested will be able to use this raw data to produce disaggregated reports. If CLECs wish to disaggregate data beyond the state or regional level, they can do so, and should not be allowed to transfer the costs to BellSouth.

Finally, the Commission must tailor geographic disaggregation to the services, measurements and local carriers involved. Because certain BellSouth systems operate on a strictly regional level, their measures should be reported on a regional level. The Commission's proposed general measures of OSS interface availability and time to answer CLEC service calls make sense only on a CLEC aggregated, region-wide reporting level. The Commission must allow local carriers flexibility in geographic disaggregation based on their systems.

¹⁵ <http://www.BellSouth.com/interconnection/>.

B. Product Level Measurement Disaggregation and Reporting

The degree of product level disaggregation proposed for most measurement categories is excessive. Pre-ordering measures would be broken down into nine separate categories. Ordering/provisioning measures would generally require separate reporting on 15 separate dimensions. The Commission's proposed approach to measuring performance would mire it, ILECs and CLECs in a swamp of meaningless detail. It is inappropriate and makes little sense for the Commission to attempt to force this level of detailed reporting on markets. A better approach would be for the Commission to identify broad ranges of ILEC activities it believes must be measured, and allow ILECs, CLECs and state commissions to develop efficient market-based solutions to providing the necessary measures. The Commission should simply drop its detailed reporting requirements. The Commission's attempt to force its detailed reporting requirements across the country is nonsensical, if only because ILECs have different systems and have taken different approaches to meeting CLEC needs, as should be expected in developing competitive markets. BellSouth objections to product level breakouts for particular measures are set out below.

BellSouth strenuously objects to the Commission's undefined proposal to measure the provision of UNE combinations. The 1996 Act imposes no statutory obligation on ILECs to provide combinations of UNEs. *Iowa Utilities Board v. FCC*, 120 F. 3d 813. Accordingly, ILECs have no section 251 nondiscrimination obligation in this area, and even the Commission's stated basis provides no justification for performance measures in this area.

VI. COMMENTS ON SPECIFIC PROPOSED MEASURES AND REPORTING REQUIREMENTS

As noted above, BellSouth's comments on the problems raised by specific performance measures and reporting requirements are intended to highlight the dangers of the Commission's currently proposed approach to prescribing measures. Attempting to micromanage the business of measuring ILEC performance under the 1996 Act throughout the country will impose excessive costs on carriers and consumers and straightjacket innovative market solutions.

BellSouth provides comments on specific proposed measures and reporting requirements below. BellSouth concurs that, where measuring and reporting is worthwhile and makes sense, reports should generally be provided separately for (1) BellSouth's own retail customers; (2) BellSouth's affiliates that provide local exchange service; (3) competing carriers in the aggregate; and (4) individual competing local carriers.¹⁶ *Notice* at ¶ 39.

A. Pre-Ordering Measures

The Commission proposes to measure the speed with which ILECs provide pre-ordering information from their databases to CLECs. *Notice* at ¶ 43-45. The Commission's measure would require calculation of the "average interval for providing access to pre-ordering information to competing carriers" and to the ILEC. *Notice* at ¶ 43. The Commission suggests that statistical sampling may be preferable to a measure based on every query that reaches the ILEC's pre-ordering interface(s). *Id.* The

¹⁶ Results for competing local carriers ordering only minimal services are unlikely to be probative, and should be omitted from reports.

Commission also proposes separate reporting broken down to nine sub-categories of pre-ordering information.

BellSouth currently measures pre-ordering average response time for itself and CLECs doing business with BellSouth in the aggregate.¹⁷ BellSouth's recent reports filed with the Georgia Public Service Commission show that BellSouth is providing non-discriminatory access to its pre-ordering services. BellSouth does not report on three of the nine functions proposed by the Commission. BellSouth does not separately report pre-ordering average response time for due date reservation, rejected query notices and facility availability. BellSouth does not reserve due dates for itself or CLECs. Neither does BellSouth provide rejected query notices to its retail units or CLECs at the pre-ordering phase. BellSouth does not provide information on facility availability through pre-ordering, this information is available in the ordering phase.

Fact that BellSouth does not provide these functions to itself or to CLECs in pre-ordering, makes reporting nonsensical.¹⁸ This illustrates the danger of Commission attempts to legislate such detailed performance measures and reporting requirements across the nation.

Similarly, BellSouth agrees that statistical sampling approaches should be available and used to develop pre-ordering data.¹⁹ *Notice* at ¶ 43. More importantly, BellSouth sees no reason for the Commission to straightjacket approaches to performance measurement and reporting. The Commission should simply state that any generally

¹⁷ BellSouth is not aware of where, or from which CLEC, pre-ordering inquiries originate. Thus, aggregated CLEC reports are appropriate.

¹⁸ Where the Commission has no authority to require ILECs to provide particular local services, it may not attempt to force ILECs to provide those services by prescribing reporting requirements. Implementing such a requirement, would only serve to raise costs for all local carriers and consumers.

accepted statistical approach to sampling or developing reports is acceptable, and leave the matter to the local carriers and state commissions involved.

B. Ordering and Provisioning Measures

1. Disaggregation of Data for Ordering and Provisioning Measures

BellSouth concurs with some of the Commission's proposed level of disaggregation for reporting on the fifteen separate ordering and provisioning measures it proposes. *Notice* at ¶ 46. Again, the Commission attempts misguidedly to micromanage the reporting process. The degree of required reporting on the measures is unwise because of the variety of systems and local carriers involved throughout the country. Attempting to impose detailed and inflexible requirements at this level will make the process unworkable or overly expensive, and will stifle innovation.

BellSouth agrees that reports on order and provisioning measures relative to resale services can be broken out into residential and business categories, each further divided into dispatch and non-dispatch.²⁰ *Notice* at ¶ 46.

Resale specials can also be sub-divided into dispatch and non-dispatch. However, the Commission must rethink whether measuring resale and UNE special orders at all is likely to yield meaningful data. Special orders are unlikely to be comparable on a CLEC-

¹⁹ BellSouth currently uses a combination of sampling and census data to produce its pre-ordering measures.

²⁰ Except for held orders. BellSouth does not currently break out held orders by dispatch and non-dispatch. There seems no reason to undergo the extra expense of separately measuring whether a held order happened to fall into one category or the other. The Commission has suggested none. Again, the Commission's blanket approach to prescribing reporting detail at this granular level will yield nothing but the "large, bad and unintended" effects predicted by Commissioner Furchtgott-Roth.

by-CLEC basis, or between particular CLECs and ILECs.²¹ For example, particular CLECs will no doubt establish niche specialties in providing particular “specials” that may be intrinsically more complicated to order and provision than the “specials” generally ordered by other CLECs or by the relevant ILEC. This will result in different results on performance measures that simply indicate different business strategies, not the presence of discrimination.

BellSouth does not currently break out reporting for UNEs along the lines proposed by the Commission. *Notice* at ¶46. Instead of the Commission’s proposed four reporting categories, BellSouth is currently reporting on UNE loops with number portability, UNE designed and UNE non-designed. These three measures provide more than adequate data to detect discrimination. BellSouth has been reporting on these categories, so a baseline of data currently exists. Forcing BellSouth to adopt the Commission’s approach would impose unnecessary costs on BellSouth and consign the current baseline of data to the dustbin. Again, the Commission must provide flexibility in reporting on its proposed performance measures.

As above, BellSouth objects to any breakout of reporting on UNE combinations. Combinations are not required by the 1996 Act, and the Commission has no role or authority in establishing measures in this area.

BellSouth concurs with the Commission’s proposed reporting on interconnection trunks.

²¹ Similarly, “specials” are not likely to be comparable across ILECs.